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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,571	08/30/2002	Gregory De Swarte	CM2187FM	7197

27752 7590 08/08/2006

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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,571

Applicant(s)

DE SWARTE ET AL.

Examiner

Randall Chin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/23910 (hereinafter WO '910).

As for claim 1, WO '910 discloses in Figs. 1-3 an elongated handle 12 for a toothbrush 10 having distal and proximal ends, the distal end being connected to a head 14, the handle comprising a first grip portion at 16 adjacent the proximal end of the handle for holding in the user's hand, the first grip portion having an ovoid cross-section which has a major axis and a minor axis, and a second grip portion (**just where**

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ribs/ridges 22 are in Fig. 3) for manipulation by the user's fingers, extending from the first grip portion in the direction of the distal end of the handle, and having, at least in a region adjacent the first grip portion an elliptical cross-section which has a major axis and a minor axis, wherein the major axis of the second grip portion is perpendicular to the major axis of the first grip portion.

As for claim 6, the first grip portion 16 is coated with elastomer at 20 (Figs. 1 and 3; p. 3, lines 18-21 and p. 6, lines 7-12).

As for claim 9, WO '910 teaches that the minor axis of the second grip portion extends between top and bottom surfaces thereof and at least one of the top and bottom surfaces has gripping ridges 22 thereon (Fig. 3).

As for claim 10, there is a third grip portion 18 (Fig. 3) distal the second grip portion, the third grip portion being both wider and deeper (merely a relative expression) than the second grip portion.

As for claim 11, the third grip portion 18 is coated with elastomer (Fig. 3; p. 3, lines 18-21).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '910.

As for claim 2 reciting that the ratio of the maximum length of the major axis of the first grip portion to the maximum length of the major axis of the second grip portion is from about 1.2:1 to about 1.8:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 3 reciting that the ratio of the major axis of the first grip portion to the minor axis of the first grip portion is from about 1.4:1 to about 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 4 reciting that the ratio of the major axis of the first grip portion to the minor axis of the first grip portion is from about 1.3:1 to about 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 5 reciting that the first grip portion has a longitudinal length of from 50 to 100 mm, it is well within the level of competence of one skilled in the art to have provided for such a length depending on the intended user (i.e., child or adult) as well as for providing a length for optimal gripping and manipulation.

With respect to claim 7 reciting that the ratio of the major axis of the second grip portion to the minor axis of the second grip portion is from about 1.3:1 to about 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a

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range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 8 reciting that the major axis of the second grip portion has a maximum length of from about 8 to about 14 mm, it is well within the level of competence of one skilled in the art to have provided for such a length for optimal gripping and manipulation.

Conclusion

6. Applicant's arguments filed 14 July 2006 have been fully considered but they are not persuasive.

Applicant argues that the WO '910 reference does not teach that there is a **second** grip portion having an ovoid cross-section. The Examiner's art rejection based upon WO '910 has never stated that the **second** grip portion has an ovoid cross-section which Applicant's argument is not accurate. Instead, the rejection states that the **first** grip portion 16 has an ovoid cross-section, as recited by claim 1, which rejection has been maintained. In WO '910, the top and bottom slightly curved portions of the first grip portion 16 are deemed to define an "ovoid" cross-section (see side view of Fig. 3) with a major axis of the second grip portion being perpendicular to a major axis of the first grip portion.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

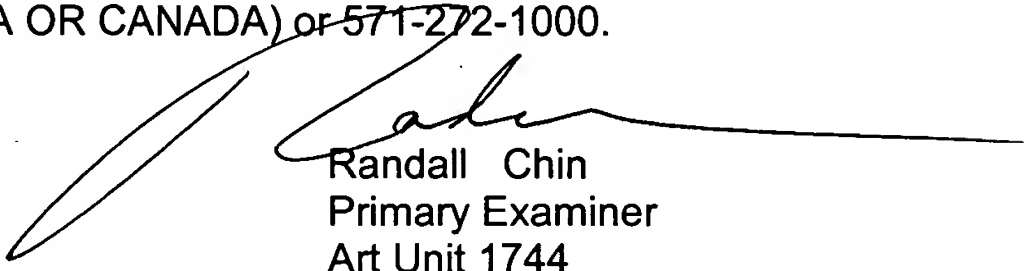
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Randall Chin
Primary Examiner
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